

Office of the Clerk, U. S.

FILED

AUG 25 1951

CHARLES ELMORE CRISLEY
CLERK

No. 204

In the Supreme Court of the United States

OCTOBER TERM, 1951

RICHARD GUESSEFELDT, PETITIONER

v.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE
UNITED STATES, AS SUCCESSOR TO THE ALLEN
PROPERTY CUSTODIAN, AND GEORGIA NEEB
CLARK, AS TREASURER OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF CO-
LUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 204

RICHARD GUESSEFELDT, PETITIONER

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE
UNITED STATES, AS SUCCESSOR TO THE ALIEN
PROPERTY CUSTODIAN, AND GEORGIA NEESE
CLARK AS TREASURER OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF CO-
LUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT

While we believe the decision below to be correct, we agree that the petition for a writ of certiorari should be granted because of the conflict between the decision below and that of the Court of Appeals for the Seventh Circuit in *Kaku Nagano v. McGrath*, 187 F. 2d 759, now pending on the Government's petition for certiorari, No. 169, this Term.

The sole issue here is whether, notwithstanding the express requirement of Section 39 of the Trading with the Enemy Act (40 Stat. 411, as

amended, 50 U. S. C. App. 1-40) that no return shall be made of property of any national of Germany or Japan vested after December 17, 1941, such property may be returned, in a suit brought under Section 9 (a) of the Act, to a German citizen not "resident within" Germany and not an "enemy" as defined in Section 2 (a) of the Act.

Petitioner's suit is for the return of property vested after December 17, 1941, pursuant to Section 5 (b) of the Act, as belonging to a national of Germany. The complaint (R. 2-6) alleges, *inter alia*, that petitioner has been a resident of Hawaii since 1896; that he was present in Germany between April 1938 and July 1949; that his stay in Germany after the outbreak of World War II was involuntary; and that, while there, he committed no act hostile to the interests of the United States. The complaint also alleges that petitioner was born in Germany in 1870 and that he is still a citizen of that country. The government's motion to dismiss was granted by the District Court (R. 20) and the Court of Appeals affirmed (R. 29). Both courts, relying on Section 39, held that the petitioner's enemy citizenship, without more, disqualifies him from recovery under the Act.

As indicated in the Government's petition for certiorari in No. 169, *McGrath v. Kaku Nagano*, this Term, there is a clear conflict between the decision below and that of the Court of Appeals

for the Seventh Circuit in *Kaku Nagano v. McGrath*, 187 F. 2d 759, and that conflict was explicitly recognized in the opinion of the court below in the instant case. Also, as pointed out in the government's petition in No. 169, the question involved is of substantial importance in the administration of the Trading with the Enemy Act.

For these reasons, we agree that this petition should be granted.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

AUGUST 1951.